

Reply to Office Action

Appl. No.: 09/751,121    Art Unit: 3624

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re:    Filing of observations addressing each of the individual deficiencies as  
         indicated by the United States Patent and Trademark Office.

Sir:

         In response to the Office Action mailed on November 18, 2005 indicating that a complete listing of all of the claims in ascending order was not present and that claims 1 -- 31 and claims 38 -- 62 were missing in the November 11, 2005 Reply, claims 1 -- 68 (claim 67 and claim 68 inadvertently were not included in the August 13, 2004 Reply by Quarles & Brady, LLP to the Office Action of April 6, 2004) along with indications relative to the claims being either withdrawn, amended or new along with which original claims the new claims have replaced, have been added to the prior November 11, 2005 Reply to the Office Action of August 11, 2005 (See Pages 20 – 49 in this Reply). Please enter the following re-submitted remarks relative to rejected claims 32 – 36, the two specific cited prior art references, Chou and Barni, considered pertinent to applicant's disclosure by the United States Patent Office, along with the other included claims in the file of the above patent application.

**REMARKS TO DETAILED ACTION OF AUGUST 11, 2005**

(Numbered as in the Office Action)

1. Again, thank you for entering my response filed 05/16/05 and Request for Extension of Time.
2. Also again, thank you for entering the Change in Power of Attorney and Correspondence Address Change.

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### **Claim Objections**

3. The claim informalities as suggested by the United States Patent Office for Claim 32, line 15 have been appropriately corrected by changing "... to bids". to "... to bid". along with the preamble of Claim 32 being amended with the inclusion of the word "computerized" so as to have a computer or network performing the method steps. The addition of these and other United States Patent Office suggested changes can be seen in the fully amended Claim 32 on Page 39 in this reply.

### **Claim Rejections – 35 U.S.C. 112**

4. From the second paragraph of 35 U.S.C. 112: The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 32 and 33 are rejected under 35 U.S.C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 32, who or what is doing the steps of inputting, transmitting or receiving and in claim 33, who or what is responding to the bid selection. Also in claim 32, the insufficient antecedent basis requirement for the limitation "bid report" has been corrected. These clarification requirements, limitation basis and other United States Patent Office suggestions can be seen addressed in the fully amended claim 32 and claim 33 on Page 39 and Page 40 respectively in this reply.

### **Claim Rejections – 35 U.S.C. 103(a)**

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6. 35 U.S.C. 103(a) forms the basis for all obviousness rejections set forth in the United States Patent Office Action and are individually addressed within the pages of this reply.

7. Claims 32 – 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,035,289) Chou et al, hereafter Chou in view of (US 6,6064,981) Barni et al, hereafter Barni.

The following considerably expanded method and system remarks relative to that as patented by the two aforementioned United States Patent Office prior art assertions, supplementing those re-submitted herein from the Applicant's Office Action Reply of November 13, 2004, comprehensively address in substantive detail both Chou and Barni, and the obvious to one skilled in the art references, in conjunction with the subsequent individual explanation responses to counter the United States Patent Office's deficiency assertions, most emphatically show that the subject-matter of Mr. John C. Abendroth's claims are indeed inventive steps:

The United States Patent Office has apparently totally misunderstood both Chou and Barni along with inadvertently miss-characterizing Mr. Abendroth's invention; thereby, unfortunately reaching a false conclusion not based on the actual facts which define the methods and systems of the two above patents and this application. As presented here and in prior submittals, Mr. Abendroth has developed a truly Comprehensive Freight Management Method and System, not simply an online platform or trading module for an electronic auction, reverse auction or typical bidding process.

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As per claim 32. The United States Patent Office states that Chou teaches, A freight management method for arranging for shipment of a load from a shipper by a carrier, based on shipping data and carrier data supplied by the shipper and the carrier, respectively, the method comprising: inputting into the central processing system a request for bids from the shipper for shipping the load (col.6, lines 34-51); electronically transmitting an invitation to bid for shipping the load from the central processing system to a plurality of carriers (col. 5, line 31-col. 6, line 21) (NOTE: This is not true, for this transmission does not occur in Chou as is shown in detail on Pages 6, 7, 8, 9 10 and 11 in this reply.) and electronically receiving bids at the central processing system from at least some of the carriers for shipping the load (col. 10, line 53-col. 11, line 64) (NOTE: This also does not reflect Chou and again is shown on the aforementioned referenced pages herein.).

All previous and all future freight management methods and systems have required and will need the participation of shippers and carriers along with each supplying information or data relative either to the load to be transported or the means of transportation along with an agreed upon time and cost to move same. This basic and most obvious, time immemorial concept is universal and should not be patentable in and of itself. Therefore, one must look at the actual offering and implementation along with the resulting benefits of the method and system to show a uniqueness not found in other potential prior art in e-commerce freight management patents. When understood, there are method and system subject-matters so unique that they cannot be achieved regardless of even combining multiple patents, theoretically under an obviousness collaboration approach of reasoning – Mr. Abendroth's application.

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Now reviewing the actual Chou patent, it is a METHOD AND APPARATUS FOR ELECTRONIC TRADING OF CARRIER CARGO CAPACITY. You will note in the ABSTRACT: A computer-implemented method for double auction trade-building by matching, based on feasibility and price/cost heuristics, a plurality of electronically posted bid with a plurality of electronically posted ask records. A one-pass sequential trade building method selects ask records one at a time and sequentially inserts, in one pass, as many of the bid records as possible while maintaining feasibility criteria. A two-pass sequential trade building method inserts the bid records in two states, the first terminating when the trade becomes feasible and the second when no further bids can be inserted.

This finite and extremely restrictive, controlled mathematical selection process method and system completely precludes the necessary flexibility and multiple, varied, open and combination comparative offer, response and selection conclusion elements required in a truly versatile freight transportation management "tool" as presented by Mr. Abendroth.

WHAT DOES THE CHOU METHOD AND SYSTEM ACTUALLY DO? This is where I feel that the United States Patent Office has misunderstood the Chou patent and subsequently incorrectly concluded that Chou is prior art to the detriment of Mr. Abendroth's application. The following will set aside the complexity expressed and potential intimidation posed by the plethora of high-level, complex mathematical terminology and constraint, heuristic equations to show exactly how Chou works:

While shippers could use such a method and system, there is no question but that its benefits are truly directed to carriers relative to pricing – this is a fixed route, carrier cargo capacity optimizer. However, it is way too limited, overly

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restrictive and lacks some extremely critical elements to be able to operate as purported by Chou, along with being able to actually address supply and demand price fluctuations in the marketplace.

#### SHIPPER & CARRIER INPUTTING INTO THE CHOU METHOD & SYSTEM:

Shippers enter "Bids" which include: Volume or weight of goods

(Placed in Bid Records)

Origin and Departure Time

Destination and Arrival Time

Bid Price (NOTE: The shipper has to indicate the acceptable price – not the way for a shipper to receive competitive rates. This inherent flaw cannot be corrected no matter on how many factors this amount may be based.)

Carriers enter "Asks" which include: Available Cargo Capacity

(Placed in Ask Records)

Origin and Departure Time

Destination and Arrival Time

Ask Price (NOTE: Minimum price set by Carrier for a full load for the route; yet, it's comprised of Bid Prices set by the Shippers for each individual load for each individual route – Carrier load-building inserts the individual

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Shipper asks to make up a full load and subsequently the price or bid the Carrier will receive from all of the individual Shippers with their individual loads for the full route – this total must at least meet the original minimum Carrier Ask for the route to be considered price feasible or the Chou method and System will render the route infeasible and not accept a match – a route must have a price ratio greater than or equal to 1 (the minimum), an all or nothing state.)

One can see that Chou is very inflexible with numerous feasibility constraints, and ironically while favoring carriers, it hurts both shippers (bidders) and carriers (askers) – pricing is set so negotiating is never and can never be an option in the Chou approach.

The Chou Double Auction Bid-Ask Matching for Trade Building is based on the aforementioned Shipper Bid Records and Carrier Ask Records in a constraint-driven, matching, route-building process. It focuses on Pick-up and Delivery Problems with Time Windows (PDPTW) which are also Node or NP-Hard. First is a One-Pass Sequential Trade Building (1-PSTB) approach which

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starts with time and capacity criteria placing asks in ascending order based on the shipper prices along with the Origin and Destination Nodes. Secondly, the ask selection is based on the maximum increase in price ratio for the route. This is considered a Basic Trade.

The Two-Pass Sequential Trade Building (2-PSTB) approach is similar to the One-Pass with the exception that it does not address a maximum increase in the price ratio for the route but rather combines Basic Trades together to form completed Trade Routes. In this route-building, the Chou Method and System states that it is intended to help fill carrier cargo capacities for less-than-container loads (LCL) or less-than-truckloads (LTL), which theoretically with all of its impressive mathematical nomenclature it could help in a very simplistic manner, but at what cost, as its limitations appear to far outweigh its benefits in the area of freight management.

Chou has a number of criteria that would render a basic trade feasible or non-executable, but not enough factors to render the system freight industry viable.

#### 12 STEPS SUMMARIZING USE OF THE CHOU METHOD AND SYSTEM:

- (1) Bid(s) (Request) is/are inputted by Shipper(s) (Bid Records)
- (2) Bid(s) (Request) is/are NOT electronically transmitted to Carrier(s)  
They are only stored in the Central Processing System
- (3) Ask(s) (Bid) is/are inputted by Carrier(s) (Ask Records)
- (4) Ask(s) (Bid) is/are NOT electronically transmitted to Shipper(s)  
They are only stored in the Central Processing System
- (5) Following either a One-Pass (1-PSTB) or Two-Pass (2-PSTB)  
Feasibility determination by the Method, the Central Processing



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System generates a Match or indicates Unfeasibility through insertion of Shipper(s) Bid(s) meeting volume and/or weight constraints, the route's origin and destination constraints, the departure and arrival time constraints and price constraints as they solely or in combination with other Shipper Asks meet the minimum price acceptable to the Carrier from the Bid Records.

- (6) Since each Shipper Bid can only be assigned to ONE Carrier Ask, who or what determines to which Carrier's Ask it first be inserted should both Carriers deliver on the same route – this priority would be important to participating Carriers?
- (7) Since Shipper Bid loads CANNOT be split between Carrier Asks, interlining on Shipper's load(s) between Carriers is not possible and larger Shipper Load Bids have limited possibilities in carrier selection with this Method and System
- (8) Therefore, there are NO electronic transmissions of multiple Asks (Bids) from Carriers to a Shipper for a individual Shipper's Load Bid (Request) for the System or operator of the system decides same.
- (9) Also, subsequently there are then NO electronically transmitted Shipper Carrier selections for the Shipper can not choose.
- (10) The Method is then completed by posting all of the executable trades by whom?, by what?, where?
- (11) Are Shipper(s) and Carrier(s) specifically alerted as to match(es)?
- (12) What happens then? Are the Shipper's and Carrier's names, phone numbers, etc. indicated to both the Carrier and Shipper respectively? Is there a confirmation by both Shipper(s) and Carrier(s)? How? Are these Binding Agreement(s)? If not the Trade-Built Route becomes unfeasible due to minimum pricing constraints should even only one of the multiple Shippers decline.

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There are so many inherent problems and so many additional constraints that are required over and above those aforementioned for the Chou purely hands-off computerized heuristics driven method and system determining the final selection to have any more than an extremely limited real-world application. Examples of other selection criteria needed but impossible to add to the Chou approach would include: Shipper and Carrier qualifications, additional equipment requirements, driver qualifications, extensive load specifications, load and loading requirements, one time or multiple delivery, and since Chou is Trade-building in routes with multiple stops – resulting last in first out scenarios plus load balance and important load compatibility factors, Dun & Bradstreet ratings, annual revenues (Corporate size requirements), on time and damage free delivery history, Carriers' Rules and Charges which address potential substantial price overages during the full transportation cycle being different for each Carrier, etc.

The above explanations show the fallacies in the Chou's adaptation as not being able to address the significant complexities necessary in an overall freight management method and system integrating and providing and protecting the unique and particular interests of the various and multiple individual participating entities and services as never before possible as is provided by Mr. Abendroth's unique invention incorporating the use of a "grand master bulletin board" concept relative multiple, diverse, fragmented and highly competitive elements to interrelate privately or publicly in operations, combination and independently through a dynamic data driven transportation tool providing unequalled freight management, operations, coordination, communication, combinations and comparisons across various sectors of the industry.

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This industry while appearing simple in overview is extremely complex in a multitude of inter-relational elements. The inventive steps necessary to specifically address those many varied bits to achieve dramatically different alternative operational results is what actually and very importantly differentiates the subject-matter of individual applicant claims relating in general to the freight transportation industry and more specifically to freight transportation management.

The other prior art assertion by the United States Patent Office is Barni, METHOD FOR ONLINE DISPLAY AND NEGOTIATION OF CARGO RATES. You will note in the ABSTRACT: Freight forwarders and carriers post published Rate and discount information for land, sea and air bearing cargo vessels to allow customers the opportunity to evaluate competitive prices, preferably in one consolidated location (e.g. a web site). A customer navigates to the site to obtain published or discounted site information offered by a freight forwarder or carrier. The customer may accept a posted rate, in which case the site operator notifies the freight forwarder or carrier. Alternatively, customers, freight forwarders and carrier may negotiate rates for particular lanes of interest using an online interactive auction block. (NOTE: Site operator notification is hardly an automatic transmission and totally unacceptable. Will it then be by e-mail along with all of the timing and awareness negativity surrounding such communication?)

It is an approach narrowly addressing the posting of fixed rates by freight forwarders and carriers for specific lanes in the shipping of containers worldwide, the published or discount rate information to be viewed by customers or buyers of such services. As another option, buyers can indicate (this is not negotiating as stated in Barni) a specific amount that they will pay for such services and use

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an Internet interactive auction block to solicit a carrier or freight forwarder for a particular lane of interest to accept the amount which is other than their posted or discounted rates to move one or more containers. This again, as with the other cited examples, does not even begin to address the multi-faceted approach to areas of freight transportation management as possible with Mr. Abendroth's application.

This posting of published rate and discount information is nothing more than a static database on the internet that is updated from time to time by the participating carriers, the same information also being available in hard copy printed rate schedules. In Barni, the site operator notifies a carrier when a shipper accepts their rate or discount for particular lane – this is NOT an automatic process. A shipper using only a rate book could contact a carrier directly with the identical result. In addition and ironically, using the posted rate portion of Barni, the name of the carrier is indicated (i.e.: Sea Land , Evergreen, etc.), which would allow a shipper to totally by-pass the method and system by NOT accepting online but rather use the information to contact the carrier directly outside of the system and then accept the carrier's posted rate for the lane, eliminating the need for the shipper or the carrier to pay for services rendered via the Barni system – a real problem that would occur over and over again. However, making the names of the carriers and the shippers anonymous for either the posted rates or for the auction block portion of Barni has its own major pitfalls due to how the Barni method and system operates.

Being anonymous, the Shipper and Carriers need to know enough about the other party or the amount of a bid is meaningless. Critical factors must be know about the other party before they will even consider working together regardless of the price. Again as previously stated with Chou, other criteria must be know in

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a freight management approach including: Shipper and Carrier qualifications, equipment requirements, driver qualifications, extensive load specifications, load and loading requirements, one time or multiple delivery, and since Chou is Trade-building in routes with multiple stops – resulting last in first out scenarios plus load balance and important load compatibility factors, Dun & Bradstreet ratings, annual revenues (Corporate size requirements), on time and damage free delivery history, etc. And, again as with Chou, Barni does not provide this needed information within the system.

Using the Auction Block in Barni, when an acceptance is made by either a Shipper of a Seller Bid or by a Carrier of a Buyers Bid, the operator (NOTE: hardly automatic and again poses a real question of timing.) may send a confirmation e-mail to the other party. The e-mail when sent to both parties is to confirm the acceptance along with a confirmation agreement identifying the terms and conditions that have been agreed upon (Shouldn't that have been fully presented before an acceptance was made?), plus the names of the parties if they were originally listed as anonymous. Also, being by e-mail, this is not part of the online method and system screen portion and with the amount of e-mail sent in today's world at thousands per day in business environments, knowing when to look, then to find the specific e-mail, then to open and read same and finally to relate it to your load data on the internet system would be extremely time intensive and difficult at best. Many e-mails today are never read due to the enormous volume received. Is there then a re-confirmation? Additionally, as mentioned before, it is hardly a negotiation as stated in Barni, since there is no possibility for back and forth multiple bid offerings to arrive at a final price.

The United States Patent Office has given Chou credit on the basis of being implicit for both a method for a bid reporting method from which a shipper can

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select one bidder (NOTE: Even though no report format is indicated in the process). In fact, the Chou shipper bids instead are addressed one at a time via insertion in carrier asks, again one at a time, until proven to be considered part of an unfeasible rout process in which a report format would not work, yet the United States Patent Office has combined a partial functionality offered by Barni assuming it to become a multiple bid listing report (NOTE: Which it also is NOT.) and then declaring it to be implicit. Mr. Abendroth's approach uniquely, the central processing system automatically electronically selects and transmits to the shipper, carrier bids in groups of seven for review and possible selection by the shipper as indicated in claim 7 (as submitted in the original application which was rejected because of form and language, revised in a new claim in a revised submittal which, in turn, has presently been withdrawn from consideration). Also, the name identification process for both the shippers and the carriers is not at all clear (Immediate? Retractable? Requested? Method?), yet again, Chou is given an implicit pass.

To make an assumption that a person skilled in the art would consider that the transmission of invitations to bid (ask) to prospective carriers in Chou (NOTE: Which, in fact as has been shown previously in this reply, never occurs, as the system totally controls the outcome without any viewing by the carriers, shipper bids being inserted in their asks as arbitrarily selected by the computer system.) would credit Chou with a modification not stated or claimed by combining same with a concept in another claimant's application, Barni (NOTE: Which would be categorically impossible, due to the inherent nature of each), along with indicating that the prospective bidders were to be pre-selected to supposedly be more efficient going from Chou back to Barni and purporting that such an alteration in Chou is a fair analysis, is anything but fair. Also in both Chou and Barni it would be unreasonable to send invitations to carriers who do not offer

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certain shipment services, yet that literally misses one of the inventive features offered by Mr. Abendroth's invention, wherein such carriers might well receive such invitations as interlining, brokering, equipment leasing or renting, new lane or region expansion efforts, etc. allow for these additional carrier service opportunities. The United States Patent Office must truly understand the methods and systems of both Chou and Barni before ruling that Mr. Abendroth's method and system is just more of the same and does not contain inventive steps.

Since it is impossible to combine the teachings of Chou and Barni, as aforementioned, to modify the shipping method of Chou; therefore, Chou can never arrive at the subject-matter of claim 32 (original claim 1) – as claim 32 of Mr. Abendroth's revised application along with its numerous supportive dependent claims presently withdrawn from consideration does, in fact, comprise a inventive steps. A review of all of these claims together will indicate the very unique unrivaled approach provided by the grand master bulletin board concept.

The United States Patent Office has asserted that none of the dependent claims 1 - 36 (which were rejected) or the revised claims 37 – 66, which have been withdrawn from consideration and claims 32 – 36 presently remaining rejected even in combination with those to which they refer meet the requirements relative to inventive-steps. The thrust of these claims has previously been merely set aside without review, which hopefully following the amendments to claims, as suggested by the United States Patent Office, shown later in this reply will finally be able to be examined. Certain claims, which might initially appear to duplicate prior art in either the real or the electronic world necessarily appear in all freight transportation approaches such as having both shippers and carriers participate, or having a shipper make a request for bids, or

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having carriers submitting bids on such a request, as has taken place in freight transportation industry since its inception, all of which should be considered implicit in any freight method and system, are not the thrust of Mr. Abendroth's application but stand only as operationally necessary base components from which spring, in this applicant's revolutionary new Method and System for E-commerce Freight Management, the new subject-matter in support of the claims.

This application for patent brings truly inventive-steps in overall freight transportation management -- not just providing more efficiency or the optimization of typical implicit freight operations. Making an impossible interpretation which disallows even the mentioning of typical base components in claims would both produce confusion and a lack of clarity while losing the context of both asserted independent and relevant dependent claims, subsequently disallowing most every even remotely relevant patent applications or approaches including the presently referenced Chou and Barni.

Relative to claim 32, again Chou is being credited with additional concepts silent within its claims, the flexibility of differentiation in areas and system approach being critical both in being able to effectively electronically and meaningfully incorporate the data within the system process to obtain the varied alternatives and versatility of use in the results. Chou is an entirely different approach, completely unlike Mr. Abendroth's application in its results, intent and functionality. As aforementioned, Chou incorporates a double auction trade-building method of matching based on feasibility and price/cost heuristics using a one-pass and two pass sequential system addressing a plurality of bid posting and ask records using a very complex mathematical formula sequencing (See col. 6, line 52 through col. 15, line 6.).



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One trained in the art can see by reviewing the high level mathematical formulas certainly developed by one with an extensive mathematical education shown in the above listed ten columns within Chou's application indicate an approach that restrictively controls the results, lacking flexibility and disallowing combination, multiple and relative use incorporation with its results found in Mr. Abendroth's freight transportation management application providing a truly unique transportation tool. Simply indicating that one is using parts of a list of parameters does not indicate prior art in the invention. How those parts are used and the complete flexibility, purpose and use of the subsequent choices is paramount.

The subject-matter of claim 32 as features in original claim 1 are inventive steps for the reasons such as the central processing system automatically, electronically selecting and transmitting to shippers, carriers bid responses in a bid report in groups of seven, in ascending or descending order based upon the carriers bid price depending upon the type of request, generated by the central processing system for review and possible selection by the shipper along with other features previously stated in this response.

Claims 33 – 36 do, in fact, contain features which in combination with the features of any claim to which they refer do meet requirements with respect to inventive steps. Unfortunately the United States Patent Office has, up to this point in time, refused to review all of the claims in Mr. Abendroth's application on their merits.

Combining Barni with Chou to reveal a carrier's name and phone number to the shipper, initially working on a completely anonymous basis, Chou is now being given the telephone number option by assuming that a skilled person

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would implement that step in such a manner after a carrier selection by the central processing system. Claim 33, while offering an anonymous open system approach, electronically presents the carrier information to the shipper automatically by the central processing system immediately following a shipper's selection, but this applicant's system also incorporates the use of private access networks in which all shipper names, carrier names and complete respective profiles are known as an important part of the system.

Claim 34 as stated in relation with the supporting claims addressing transportation brokers and third party logistics (3PL) are not known in the state of the art or as indicated in the electronic auction systems of Chou or Barni as it is applied in this application. First, this is not a typical auction system as previously indicated and second, loads offered by brokers or 3PLs can be duplicate offerings of those by the original shipper, combined offerings, separate offerings, fixed or revised offerings all so indicated by prefixes and/or suffixes, none of which would be found with either Chou or Barni.

Claims 35 and 36 relating to prior explanations of other claims within this reply necessarily address a plurality of loads to an individual carrier, as a carrier being offered only one load would not be in business very long especially if that carrier were not successful in obtaining that one load. In addition, shippers necessarily will need to receive bids from a plurality of loads from a plurality of carriers, the methodology of this process being, as aforementioned, unique.

## **RESPONSE TO ARGUMENTS**

The 35 U.S.C. 112 second paragraph rejection problems of claims 32, 33, 34, 35 and 36 have been amended as suggested by the United States Patent Office.